SEP 7 1943
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 327

MRS. REGINALD REICHMAN,

Petitioner,

AGAINST

COMPAGNIE GENERALE TRANSATLANTIQUE,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of the State of New York and Brief in Support Thereof.

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INDEX.

PETITION: PAGE

A. The Question Presented 2

B. Summary Statement of the Matter Involved 2

C. Statement as to Jurisdiction 10

D. Reasons Relied on for the Allowance of the Writ 11

BRIEF:

POINT I.—The case involves a right, privilege or immunity claimed by the respondent under the statutes of the United States 14

POINT II.—The matter involved is of great public interest 15

POINT III.—The decision sought to be reviewed is directly in conflict with the decision of this Court in The Kensington, 183 U. S. 263 15

Conclusion 17

CASES CITED.

A. C. Trust Co. v. Coeur D'Alene Mines Corp., 312 U. S. 38 11

Awotin v. Atlas Exchange National Bank, 295 U. S. 209 11

Jones National Bank v. Yates, 240 U. S. 541 11

The Kensington, 183 U. S. 263 ..... 5, 7, 9, 11, 12, 15, 16

The Minnetonka, 146 F. 509, certiorari denied, 203 U. S. 589 ..... 5, 7, 9, 11, 17

Seabury v. Green, 29 U. S. 165 11

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Respondent.

No. .....

Petition for Writ of Certiorari to the Court of Appeals of the State of New York and Brief in Support Thereof.

The petitioner, Mrs. Reginald Reichman, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York entered in the above entitled cause on the 22nd day of April, 1943, affirming, by a decision in which three members of said Court dissented, an order of the Appellate Division of the Supreme Court, First Department, which affirmed a judgment of the Supreme Court, New York County, entered after a directed verdict in favor of the petitioner, and against the respondent during a trial before Court and Jury, for the limited sum of $250.00, although her loss concededly was in the sum of $13,360.00. A motion thereafter made by petitioner for a re-argument and reversal of its decision was denied by the said Court of Appeals of the State of New York on the 10th day of June, 1943.

A.

The Question Presented.

The question presented is:

Whether the judgment of the highest Court of the State of New York, limiting respondent's liability to $250.00 for its loss of respondent's jewelry and cash of the stipulated value of $13,360.00, when deposited with respondent for safekeeping, pursuant to its instructions, is proper when the only receipt issued for the deposit of the property relieved the respondent of any responsibility, and when the passage ticket limited the valuation to $250 for all personal property and gave no alternate rate by which a passenger could take money or jewelry on board for use on the voyage unless such property were to be shipped under a cargo bill of lading, thus bringing such shipment directly under the provision for limited liability and exemption from negligence contained in Title 46, Chapter VIII, U. S. C. A., formerly "Harter Act" now "Shipping Act" and where the ticket expressly claimed the benefit of all such limitations and exemptions.

B.

Summary Statement of the Matter Involved.

A brief digest of the conceded facts involved in the case are as follows:

The petitioner, on February 10, 1937, with her sister, embarked upon the Steamship *Champlain,* owned and operated by respondent, for a luxury cruise from New York, U. S. A., to the West Indies and return. She paid the rate demanded and was a passenger properly aboard the ship (R. p. 29). During the voyage, the passengers dressed formally (R. p. 43). The women aboard wore evening gowns and jewelry of value. Mrs. Reichman wore

jewelry of the agreed value of $13,200.00 and carried in her purse cash in the amount of $160.00 (R. p. 27). It was stipulated at the trial that the amount of such jewelry and cash of petitioner was appropriate for the occasion and to her station in life (R. p. 43).

The respondent published in the passenger list the following notice with respect to valuables:

> "Valuables. The particular attention of passengers is drawn to the ticket conditions regarding the carriage and custody of articles specified in Section 4281 of the revised Statutes of the United States; but passengers can, and are accordingly advised to protect themselves by insurance. The French Line has provided a safe at the Information Desk in which passengers may deposit money, jewels, ornaments, documents, or other valuables for safe keeping, and a deposit receipt will be issued by the Purser." (Section 4281 of revised Statutes of United States is Section 181 of Title 46, Chapter VIII of the Code of Laws of the United States.) (R. p. 113.)

On the morning following the start of the cruise, petitioner made arrangements for the deposit of her jewels and money as respondent suggested in the said notice and she received the following receipt:

"Compagnie Generale Transatlantique
6 Rue Auber—Paris

No. 4958 Steamship *Champlain*
Voyage No.

Received on deposit from Mrs. Reichman

sealed

without liability or responsibility of any nature while in the charge of the company or of the Captain.

For the Company

Cashier MAX KLEINER."

(R. p. 65.)

During the voyage, Mrs. Reichman left her jewels and money regularly in charge of respondent's purser and when she desired the same she would present her receipt to the purser who would take her envelope from the safe and give it to her and hold the receipt and upon the next deposit issue the same receipt back to Mrs. Reichman (R. p. 33). This practice continued until February 14, 1937 when, upon presenting her receipt which had been given out that morning upon the deposit of the jewels, it was learned that her jewels and money were missing. The same were never returned to her and no explanation whatsoever for the non-return of said valuables was ever given to the petitioner and none was offered by the respondent at the trial (R. p. 40).

An action was brought against the respondent in the Supreme Court, New York County, to recover the value of the said jewelry and cash on two causes of action, one for breach of contract of bailment and the other, for conversion. After both sides rested, the Trial Court refused to permit the case to go to the jury and over petitioner's objection and exception duly taken directed a verdict in favor of petitioner for the sum of $250.00 because of certain alleged limitations in the passage ticket (R. p. 107).

In the Trial Court, the petitioner maintained the limitations of the passage ticket were not applicable to jewelry and cash intended to be used during the cruise and the

limitations were violative of the settled common and statutory law of United States and the law as laid down in this Court in such cases as *The Kensington*, 183 U. S. 263, and *The Minnetonka*, 146 F. 509, certiorari denied, 203 U. S. 589.

Upon appeal to the Appellate Division of the Supreme Court of the State of New York, First Department, the Trial Court's decision was unanimously affirmed without opinion. The Court of Appeals of the State of New York granted petitioner's motion for leave to appeal and thereafter said Court affirmed the judgment. However, three judges of said Court joined in a dissenting opinion, sustaining petitioner's views, and voted for judgment in petitioner's favor for the full amount of her loss.

The relevant provisions of the passage ticket upon which the Court relied in limiting respondent's liability herein were as follows:

> "3. The carrier shall not be liable for * * * loss of or damage or delay to his (a passenger's) baggage, personal effects or other property arising from * * * robbers, thieves, barratry, false or errors in * * * management * * *. The Carrier shall be entitled to avail itself of all exemptions or limitations of liability contained in Title 46, Chapter VIII of the Code of Laws of the U. S. A.
>
> "4. REGULATIONS AND LIMITATIONS OF CARRIER'S LIABILITY WITH RESPECT TO PERSONAL PROPERTY.
>
> "(a) The term 'baggage' as used herein means only trunks, handbags, valises, satchels and bundles, containing such wearing apparel and personal effects as are necessary and appropriate to the purpose of the journey and to the passenger's station in life.

"(b) The Carrier does not undertake to carry as *baggage* any merchandise, samples, furniture, household goods, tools of trade, property of others than the passenger, pictures, perishable goods, glass ware, liquids, bric-a-brac, *money,* documents, *valuables, or any of the articles listed in Sec. 4281 of the Revised Statutes of the United States.* Such articles must be shipped as commercial cargo under bills of lading. The passenger hereby warrants that no such articles are or will be contained in any receptacle or container presented by him as baggage hereunder, and if any such articles are shipped by the passenger as baggage in breach of this warranty, no liability shall attach to the Carrier on account thereof as Carrier or bailee or in any other capacity, either for negligence or otherwise.

* * * * *

"(g) Each first-class passenger represents, and it is hereby agreed, that the total value of his baggage, as defined in section 4 (a) of this contract, does not exceed $150, and that the total value of all other property taken with him on the voyage, and carried on his person or retained in his possession, does not exceed $100 * * *. The Carrier's liability, if any (and whether or not excess baggage is carried and paid for) shall not exceed the above amount in the event of loss, damage or delay to any of the passenger's property taken with him on the voyage, the fare for the voyage and the rate of excess baggage tariff being in part based upon the above valuation. Nevertheless, each passenger may, prior to embarkment, deliver a declaration in writing, specifying a higher value, to the Carrier at 610 Fifth Avenue, New York, N. Y. U. S. A. or at 6 Rue

Auber, Paris, France, or to the Carrier's baggage master, and pay an additional amount of 1% of the excess of value thus specified over the said amount, for which a written receipt must be obtained, in which case the Carrier's liability shall not exceed such specified value.

"(h) A reasonable amount of space in a deposit box or safe on board, if the steamer is so equipped, will be allowed each passenger upon request, but in consideration of the Carrier's furnishing such deposit box or safe without extra cost to passengers, and inasmuch as no charge is made therefor, it is mutually agreed that the Carrier's liability, if any, for loss of, or damage to, the deposit made therein by the passenger shall not be increased by reason of a deposit being made. In the event of declaration of excess value, as herein provided, the Carrier may require that valuables be placed in the custody of the Purser, but without assumption of any increased responsibility on the Carrier's part.

"(i) The Carrier does not assume any responsibility for unchecked baggage, nor for any articles which the passenger retains under his personal control, in his cabin or elsewhere."

Petitioner contends that the limitations of liability purported to be contained in the said receipt and in the above provisions of the passage ticket are in violation of the statutory and common law of the United States and contrary to the principles announced in *The Kensington* and *The Minnetonka, supra.*

The provisions are likewise repugnant to a Federal statute, to wit, Section 190 of Title 46, Chapter VIII of the United States Code, which provides as follows:

> "§190. Stipulations relieving from liability for negligence. It shall not be lawful for the manager agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, *custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge.* Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect. (Feb. 13, 1893, c. 105, s. 1, 27 Stat. 445.)

It is the further contention of the petitioner that the limitations of liability contained in provisions of the passage ticket assuming they apply to the instant case, are void because they do not give the passenger a valid alternate rate whereby she could be protected in full against the loss of her money and jewels taken by her for use on the voyage, and further that the provisions of the said ticket do not apply to the passenger's money and jewelry, particularly when the same are held for safekeeping by the Steamship Line in the manner above described.

The limited recovery, therefore, is in derogation of the Common Law of the United States and of the United States Statute quoted above, respecting carriage of goods at sea.

The alternative valuation in the ticket permitting a declaration of excess value upon payment of an additional rate provided in Section 4-G thereof does not apply to the jewelry and cash in question as that paragraph applies exclusively to baggage, from which money and valuables are expressly excluded. According to the terms of the

ticket, the only method of protecting such jewelry and cash would be by shipping it under a cargo bill of lading, although such articles are intended to be worn by the passenger on journey, and by the terms of the ticket (paragraph 3) said shipment would be subject to the exemptions and limitations of liability contained in Title 46, Chapter VIII of the Code of Laws of the United States of America (formerly the Harter Act), which exonerates the carrier under certain conditions from any liability for loss resulting from faults or errors in navigation or management but forbids the incorporation in any bill of lading, shipping document or ticket, or any agreement relieving it from liability in failing to properly deliver property entrusted for carriage.

The decision in question is directly contrary to the decision of the Supreme Court of the United States in the case of *The Kensington, supra,* which specifically held that a limitation of liability in a passage ticket coupled with the provision for greater liability only upon subjecting the goods to shipment under a cargo bill of lading was void as against public policy, and holding that a right given to a passenger to increase the amount of liability by paying a larger compensation was of no avail when its enjoyment was burdened with conditions whereby the ship owner could escape liability for its own faults. It further held even under the terms of the Harter Act, if same were considered applicable the limitation was void because of prohibitions in such act against limiting liability to properly deliver goods carried pursuant to its terms.

The decision in the instant case is also in conflict with the decision in U. S. Circuit Court in *The Minnetonka, supra,* which held that the provisions of the Harter Act (which were incorporated in the passage ticket), apply only where the articles of jewelry and cash are received

for shipment from a shipper in the usual course of business and does not relieve a ship owner from liability for the loss of jewelry worn and carried on board by a passenger and intended to be used on the voyage.

C.

Statement as to Jurisdiction.

The Court has jurisdiction to review said decision, under Section 237 (b) of the The Judicial Code (28 U. S. C., Section 344), viz:

> "(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; * * * or where any title, right, privilege, or immunity is specially set up or claimed by either party under * * * any * * * statute of * * * the United States * * *."

The case involves the right of a maritime carrier from domestic to foreign ports and return to subject the personal effects of passengers by ticket provisions to the limitations of liability contained in certain statutes of the United States of America, namely, Title 46, Chapter VIII of the Code of Laws of the United States (the Harter Act) without in turn subjecting the carrier to liability for its own faults, and the other sections of such Acts placing a liability on the carrier, and whether the decisions of

this Court in *The Kensington*, and *The Minnetonka, supra*, prohibit such limitation under the statute and the rules as laid down by the decisions.

This question was raised and argued at length in the briefs submitted in the Trial Court, the Appellate Division of the Supreme Court of the State of New York and in the Court of Appeals of the State of New York. The dissenting opinion in the Court of Appeals clearly expresses this.

The cases believed to support the jurisdiction of the Court are as follows:

Jones National Bank v. *Yates*, 240 U. S. 541;
Seabury v. *Green*, 29 U. S. 165;
A. C. Frost & Co. v. *Coeur D'Alene Mines Corp.*, 312 U. S. 38;
Awotin v. *Atlas Exchange National Bank*, 295 U. S. 209.

D.

Reasons Relied on for the Allowance of the Writ.

It is respectfully submitted that an important Federal question is involved herein. The rights of passengers on foreign vessels upon the high seas is a matter of concern and importance to the large body of American travellers who, in normal times, use such means of conveyance. Such rights are peculiarly the subject of United States statutes and Common Law and the rules and decisions of its maritime courts.

The decision of the Court of Appeals of the State of New York directly conflicts with the decision of the United States Courts in *The Kensington* and *The Minnetonka, supra*, and holds in effect that a vessel can limit its liability for passenger's valuables and permit no alternate valuation upon payment of a higher rate except on condi-

tion that the money and jewels be shipped under a cargo bill of lading, although intended to be worn on the journey, thus clearly offering no alternate rate at all and further requiring the risk be subjected to the limitations of the Shipping Act, Title 46, Ch. VIII, U. S. C. A., or other limitations which might be fixed by the carrier. In the case of *The Kensington, supra,* the Supreme Court of the United States has squarely held that such limitations are void as contrary to public policy. The Court of Appeals of the State of New York, in the instant case, has decided exactly contrary to said decision of the Supreme Court of the United States, which has remained the unchallenged law on the subject for many years.

By its decision, said Court of Appeals has rendered invalid said Section 190 of Title 46 of Chapter VIII of United States Code.

Your petitioner therefore verily believes that this application presents a case recognizable under the rules of this Honorable Court and one eminently proper for review.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of the State of New York, commanding that Court to certify and to send to this Court for its review a full and complete transcript of the record of all proceedings in the said suit, and to stand to and abide by such order and direction as your Honorable Court shall deem meet and the circumstances of the case require, and that your petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem just and proper.

Dated: New York, September 1st, 1943.

HAROLD R. ZEAMANS,
Attorney for Petitioner.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.:

HAROLD R. ZEAMANS, being duly sworn, says: That he is the attorney for the above-named petitioner, Mrs. Reginald Reichman; that he has read the foregoing petition by him subscribed and that the facts stated therein are true to the best of his knowledge and belief.

HAROLD R. ZEAMANS.

Subscribed and sworn to before me
this 1st day of September, 1943.

MILDRED S. GOLDRING,
Notary Public,
Kings Co. Clk's No. 790, Reg. No. 434-G-5;
N. Y. Co. Clk's No. 1031, Reg. No. 602-G-2;
Queens Co. Clk's No. 2107, Reg. No. 232-G-5;
Commission Expires March 30, 1945.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

MRS. REGINALD REICHMAN,
Petitioner,

AGAINST

COMPAGNIE GENERALE
TRANSATLANTIQUE,
Respondent.

No. .....

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

POINT I.

The case involves a right, privilege or immunity claimed by the respondent under the statute of the United States.

The limitation of liability claimed by the respondent is valid only if an alternate rate on a declaration of higher value is provided in the passage ticket. Under the terms of the passage ticket as quoted at length in the petition submitted herewith, the higher valuation is conditioned upon the passenger submitting her jewelry and cash intended to be used on the voyage to shipment as commercial cargo under a bill of lading.

Such condition is impossible of fulfillment because when goods are so shipped the passenger could not retain their control or use. Further if so shipped all the limitations contained in the United States Code, Title 46, Chapter VIII (formerly the Harter Act), would apply. Some of such provisions relieve the ship of all liability even for negligence and hence offer no protection to the passenger.

The sole question involved is whether the carrier can force the passenger to accept the limitations of that Act by incorporating the provisions in passage tickets as a condition of a higher valuation of her property, and the carrier-respondent herein is therefore claiming a right, privilege or immunity under the said Act.

In *The Kensington* case this Court has held such is not a valid alternate rate.

POINT II.

The Matter Involved Is of Great Public Interest.

The right of passengers on foreign ships to have their property carried safely or to receive reimbursement from the Carrier, is a matter of outstanding importance to the great body of American travelers. An important public interest is involved affecting the property rights of a very large number of persons.

POINT III.

The decision sought to be reviewed is directly in conflict with the decision of this Court in The Kensington, 183 U. S. 263.

The Court of Appeals of the State of New York, in the case at bar held that where a passage ticket limits liability of the carrier to foreign ports to the sum of $250

for personal property of a passenger the limitation is valid, although a higher valuation for paying a higher rate is permitted only on condition of subjecting the jewelry and cash of the passenger to the terms of the United States Code, Title 46, Chapter VIII (formerly the Harter Act) by shipping under a cargo bill of lading.

Three of the Judges of the Court of Appeals dissented from that holding.

This Court has held in *The Kensington, supra,* which is on all fours with the case in question that such limitation is invalid. There the passenger's personal baggage was damaged and it was held that the provisions in the ticket limiting liability for damage to 250 francs, without giving an alternate rate, except on condition of subjecting the property to the limitations of liability contained in the Harter Act, were invalid, stating at page 273:

> "* * * The passenger then was subjected to the inevitable alternative of having no recourse whatever for his baggage beyond the value of 250 francs, unless he agreed that he would subject it to the Harter Act. But if that Law was made applicable its provisions controlled, and therefore the carrier became entitled to all the benefits of the third section of the act, exempting from all loss or damage resulting from faults or errors in navigation or in the management of the vessel, and for other causes which are specified in the section in question. To make this exaction was consequently but in effect to demand that the passenger agree, as a prerequisite to any increased valuation of his baggage, to subject it to a risk of loss brought about by the negligence of the carrier, when otherwise the baggage would not have been submitted to risk arising from such neglect—an obvious requirement exempting the carrier from the consequences of his

own negligence. On the other hand, if the assumption be indulged in that the baggage of the passenger was within the purview of the Harter Act, a stipulation embodied in another provision of the ticket, relieving the carrier under any and every circumstance from every conceivable neglect of his servants, 'either in matters aforesaid or otherwise howsoever', was a plain violation of the prohibitions contained in the second section of the Harter Act. (See 46 U. S. C., sec. 191, and sec. 1303 [2], [8].) It follows, if the Harter Act did not apply to the baggage of a passenger, a stipulation which compelled the passenger, if he wished to value his baggage, to agree to subject it to that act, was an illegal effort on the part of the carrier to relieve himself from liability for his negligence. If this result is escaped by treating the baggage of the passenger as within the scope of the Harter Act, then there are provisions found in the ticket which are void, because they contain stipulations for immunity from negligence which are in direct conflict with the prohibition of that act."

In *The Minnetonka, supra,* it was held that the provisions of the Harter Act, although incorporated in the passage ticket, were inapplicable to articles of jewelry worn and carried on board, and the carrier was not absolved from liability to the full extent of the loss of such jewelry.

Conclusion.

The case is clearly one of which the public interest requires a full review by this Court and involves the construction of a Federal Statute by a State Court where the decision is directly contrary to the United States Circuit

Court of Appeals and United States Supreme Court construction of the same statute. The situation presented comes within the purview of Rule 38, subdivision 5 (a) of the Rules of this Court.

A writ of certiorari should therefore be granted by this Court, so that an argument of the questions raised may be had, and a judgment directed by this Court in accordance with its interpretation of the Statutes involved.

Dated, New York, N. Y., September 1st, 1943.

HAROLD R. ZEAMANS,
Attorney for Petitioner.

(7)

FILED
SEP 24 1943
CHARLES ELMORE CROPLEY
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Supreme Court of the United States

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MRS. REGINALD REICHMAN,
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against

COMPAGNIE GENERALE TRANSATLANTIQUE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX

	PAGE
STATEMENT	1
THE QUESTION PRESENTED	2
POINT I—No federal question was decided by the New York Court of Appeals	4
POINT II—The decision sought to be reviewed is not in conflict with *The Kensington*, 183 U. S. 263	5
CONCLUSION	5

CASES CITED

D'Utassy v. Barrett, 219 N. Y. 420	4
Kensington, The, 183 U. S. 263	5
Murray v. Cunard Steamship Co., 235 N. Y. 162	3

STATUTES CITED

U. S. Code, Title 46, §§ 190 et seq.	4

Supreme Court of the United States

OCTOBER TERM, 1943

No. 327

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Petitioner,

against

COMPAGNIE GENERALE TRANSATLANTIQUE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement

The petitioner, who was a passenger on a West Indies cruise of the respondent's steamship Champlain in February, 1937, asks this Court to review a determination of the New York Court of Appeals sustaining the validity of a provision of the contract of passage limiting respondent's liability for baggage and personal property to $250 in the absence of a declaration of a higher value and payment of an additional fare. The action was tried in the New York Supreme Court, New York County, where a directed verdict was granted in favor of the petitioner for $250 in accordance with respondent's motion (R. 111). The judgment of the Supreme Court, entered upon the verdict, was affirmed without opinion by the Appellate Division of the Supreme Court, First Department, 263 App. Div. 983 (R. 131). It was again affirmed by the

New York Court of Appeals, 290 N. Y. 344 (R. 134), and thereafter a motion for reargument was denied by the Court of Appeals (R. 138).

The Question Presented

The petitioner's statement purporting to set forth the question presented, to be found at page 2 of the petition herein, is an argumentative and inaccurate summary of the matters that were presented to and passed upon by the Court of Appeals. The passenger placed her property, which was conceded at the trial to have a value of $13,360, in a sealed deposit envelope in the ship's safe, from which it was thereafter stolen or lost. Respondent conceded its liability to the extent of $250 in accordance with the limitation contained in the following provisions of the contract of passage:

> "4. REGULATIONS AND LIMITATIONS OF CARRIER'S LIABILITY WITH RESPECT TO PERSONAL PROPERTY.
>
> (a) The term 'baggage' as used herein means only trunks, handbags, valises, satchels and bundles, containing such wearing apparel and personal effects as are necessary and appropriate to the purpose of the journey and to the passenger's station in life.
>
> * * * * * *
>
> (g) Each first-class passenger represents, and it is hereby agreed, that the total value of his baggage, as defined in section 4(a) of this contract, does not exceed $150, and that the total value of all other property taken with him on the voyage, and carried on his person or retained in his possession, does not exceed $100; * * *. The Carrier's liability, if any (and whether or not excess baggage is carried and paid for) shall not exceed the above amount in the event of loss, damage or delay to any of the passenger's property taken with him on the voyage, the fare for the voyage and the rate of excess baggage tariff being in part based upon the above valuation. Nevertheless,

each passenger may, prior to embarkment, deliver a declaration in writing, specifying a higher value, to the Carrier at 610 Fifth Avenue, New York, N. Y., U. S. A., or at 6 Rue Auber, Paris, France, or to the Carrier's baggage master, and pay an additional amount of 1% of the excess of value thus specified over the said amount, for which a written receipt must be obtained, in which case the Carrier's liability shall not exceed such specified value.

(h) A reasonable amount of space in a deposit box or safe on board, if the steamer is so equipped, will be allowed each passenger upon request, but, in consideration of the Carrier's furnishing such deposit box or safe without extra cost to passengers, and inasmuch as no charge is made therefor, it is mutually agreed that the Carrier's liability, if any, for loss of, or damage to, the deposit made therein by the passenger shall not be increased by reason of a deposit being made."

In affirming the judgments of the lower courts denying the passenger's right to recover more than $250, the Court of Appeals held in an opinion by Judge Lewis (R. 140-145):

(1) that the passenger's act of acceptance of the passage contract gave rise to an implication of her assent to its terms (quoting from Judge Cardozo's opinion in *Murray* v. *Cunard Steamship Co.*, 235 N. Y. 162);

(2) that the agreed valuation clause, "reasonable in its terms and * * * authorized by the settled law of this jurisdiction", did not evade liability for the entire loss, but placed upon the plaintiff's property "a valuation which establishes the measure of defendant's limited responsibility in the event liability is established";

(3) that had the passenger desired to evaluate her property at a higher figure and pay the additional fare required by the contract, she could have protected herself in full against the loss of her valuables;

(4) that the claim for conversion was insufficient to defeat the agreed valuation clause in the absence of evidence that the defendant converted the property to its own benefit or was guilty of an affirmative act of wrongdoing (*D'Utassy* v. *Barrett,* 219 N. Y. 420).

The petitioner's assertion (Petition, p. 2) that the passage contract gave no alternative rate by which a passenger could take money or jewelry on board for use on the voyage unless such property were to be shipped under a cargo bill of lading was flatly rejected by the Court of Appeals.

POINT I

No federal question was decided by the New York Court of Appeals.

Neither in her pleadings nor in her proof did petitioner assert the existence of a federal question. She now takes the extraordinary position that the Harter Act (U. S. Code, Title 46, §§ 190, *et seq.*) is in some manner applicable to the present controversy and thus that a federal question is presented. The argument seems to be this: (1) that under petitioner's interpretation of the contract (rejected by every court) the passenger could obtain an increased valuation for her property only by shipping it under a cargo bill of lading, (2) that the Harter Act applies to bill of lading shipments, and (3) that this presents a federal question. As might be expected the statute in question was not even mentioned in the majority opinion of the Court of Appeals. The sole matter before that Court was to rule upon the plain provisions of the contract, not under federal law but in the light of the settled public policy of the State of New York.

POINT II

The decision sought to be reviewed is not in conflict with *The Kensington*, 183 U. S. 263.

The purported conflict with the decision of this Court in *The Kensington*, 183 U. S. 263, is wholly fictitious. The provisions of the contract in *The Kensington* were totally different from the contract in the case at bar. There the passenger was required in every instance where he wished to increase the carrier's liability above the stipulated amount, and without regard to the nature of the property, to secure the issuance of a cargo bill of lading. The facts of that case were so obviously different that the Court of Appeals did not even consider it necessary to distinguish it from the case at bar.

CONCLUSION

The decision of the Trial Court has twice been reviewed and twice affirmed. No federal question and no other question of any great public importance is involved. It is inconceivable that the matter should require a further review by this Court.

Respectfully submitted,

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